

E-FILED on 6/7/07

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

KINH TONG,

Plaintiff,

v.

CAPITAL MANAGEMENT SERVICES
GROUP, INC., f/k/a CAPITAL
MANAGEMENT SERVICES, INC.,

Defendant.

No. C-07-01026 RMW

ORDER DENYING PLAINTIFF'S MOTION
TO STRIKE SIXTH AFFIRMATIVE
DEFENSE

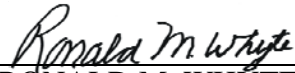
[Re Docket No. 12]

Plaintiff Kinh Tong moves to strike defendant's sixth affirmative defense and for a more definite statement. Plaintiff's claims arise under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.* The affirmative defense at issue is a *bona fide* error defense based on 15 U.S.C. § 1692k. Plaintiff contends that the *bona fide* error defense must be pleaded with particularity under Federal Rule of Procedure 9, which provides, "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." FED. R. CIV. P. 9(b). Plaintiff asks the court to strike the defense as pleaded, and to permit the defendant to replead it with more particularity.

The *bona fide* error defense permits the defendant to prove, if possible, that any actions that resulted in violation of the FDCPA stemmed from a variety of mistake permitted under the statute.

1 The court finds that defendants have pleaded the defense with sufficient detail to permit plaintiff to
2 take discovery on the asserted defense. No enhanced pleading is necessary. Accordingly, the court
3 denies plaintiff's motion to strike.

4
5
6 DATED: 6/6/07



RONALD M. WHYTE
United States District Judge

United States District Court
For the Northern District of California

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7 Counsel are responsible for distributing copies of this document to co-counsel that have not
8 registered for e-filing under the court's CM/ECF program.

9
10 **Dated:** 6/7/07

/s/ MAG
Chambers of Judge Whyte

United States District Court
For the Northern District of California